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INFORMATION DISCLOSURE STATEMENT BY APPLICANT

(Use as many sheets as necessary)

Sheet 1 of 2

Complete if Known

Application Number	10/596254
Filing Date	June 6, 2006
First Named Inventor	Tony JABBOUR
Art Unit	3643
Examiner Name	Not yet assigned
Attorney Docket Number	78648-10

U.S. PATENT DOCUMENTS

FOREIGN PATENT DOCUMENTS

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Examiner Initials *	Cite No. 1	Foreign Patent Document	Publication Date MM-DD-YYYY	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages Or Relevant Figures Appear
		Country Code ³ Number ⁴ Kind Code ⁵ (if known)			

Examiner Signature		Date Considered	
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NON PATENT LITERATURE DOCUMENTS

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accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 570). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 678.

III. THE HECK RULE

Garcia seeks injunctive relief under 42 U.S.C. § 1983 for his allegedly unlawful parole denial. To recover damages based on allegations of “unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid, a [civil rights] plaintiff must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determinations, or called into question by a federal court’s issuance of a writ of habeas corpus [under] 28 U.S.C. § 2254.” *Heck v. Humphrey*, 512 U.S. 477, 486-87 (1994). A claim for damages that bears a relationship to a conviction or sentence that has not been so invalidated is not cognizable under 42 U.S.C. § 1983. *Id.* Therefore, if a judgment in favor of the plaintiff would “necessarily imply the invalidity of his conviction or sentence,” then the complaint must be dismissed unless the plaintiff can demonstrate that the conviction or sentence has already been invalidated. *Id.*

The *Heck* rule applies to claims like Garcia’s, which means that Garcia must show that his continued confinement as a result of the parole denial has been invalidated by a state or federal court. *See McGrew v. Tex. Bd. of Pardons & Paroles*, 47 F.3d 158, 161 (5th Cir. 1995); *Waller v. Collier*, 297 Fed. App’x 326, 327 (5th Cir. 2008). Garcia does

not allege or show that the result of the parole proceeding has been invalidated or otherwise set aside by an authorized state tribunal or by a federal habeas corpus proceeding under 28 U.S.C. § 2254. Absent a showing that the result of the parole proceeding has been invalidated or set aside, the rule in *Heck* precludes Garcia's claims for injunctive relief. *See Clarke v. Stalder*, 154 F.3d 186, 190-91 (5th Cir. 1998).

IV. ABSOLUTE IMMUNITY

Even if a complaint is barred by *Heck*, it remains appropriate for the district court to consider the possible applicability of the doctrine of absolute immunity. *McGrew*, 47 F.3d at 161; *Waller*, 297 Fed. App'x at 327. Parole board members and hearing officers who personally participate in the “quasi-judicial” activity of revoking parole are absolutely immune from suit, as is the Texas Board of Pardons and Paroles itself. *McGrew*, 47 F.3d at 161; *Hunter v. Rodriguez*, 73 Fed. App'x 768, 769-70 (5th Cir. 2003). Here, Garcia sued the Parole Board itself as well as two individuals, Ira Evans and Lynn Ruzicka, who participated in the decision to deny him parole. Were Garcia's claims for money damages, the Court would dismiss all claims against the defendants with prejudice. However, Garcia only seeks injunctive relief, so his claims will be dismissed without prejudice.¹ *Id.*; *see also Clarke*, 154 F.3d at 191.

¹ The Court declines to construe Garcia's claims as habeas claims. Garcia has filed at least one federal habeas petition, *see* Southern District of Texas Case Number 3:16-CV-102, and is clearly familiar with the habeas remedy. It is evident that Garcia would have brought these claims as federal habeas claims had he intended for them to be so characterized. Moreover, Garcia does not allege, and a search of publicly available records does not show, that he has presented these claims to the Texas Court of Criminal Appeals.

V. **CONCLUSION**

Based on the foregoing, the Court **ORDERS** as follows:

1. Garcia's complaint is **DISMISSED** under 28 U.S.C. § 1915(e)(2)(B) for failure to state a claim. As noted in the opinion, the dismissal is without prejudice.
2. All pending motions are **DENIED** as moot.

The Clerk is directed to provide a copy of this order to the parties. The Clerk is also directed to provide a copy of this order to the Manager of the Three-Strikes List for the Southern District of Texas at Three_Strikes@txs.uscourts.gov.

SIGNED at Galveston, Texas on August 14, 2017.


GEORGE C. HANKS, JR.
UNITED STATES DISTRICT JUDGE